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Book Reviews

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AERONAUTICAL LAW. By Federico N. Videla Escalada. Alphen aan den Rijn, Netherlands: Sijthoff & Noordhoff, 1979, 869 pp.

Dr. Federico N. Videla Escalada is a noted scholar holding professorships of International Law at the University of Buenos Aires and of Air and Space Law at the University of Salvador. *Aeronautical Law* is an adaptation of the author's five-volume treatise on aeronautical law, originally published in Spanish.

The author's apparent purpose in publishing the shorter version is to provide a focal point for fostering international understanding. In his foreword Dr. Videla Escalada expresses his desire that his book reach a wide circle of readers, bringing closer together "the peoples of the different geographical regions, in the general realization of the supreme importance of juridical values in the field of international aviation" He urges the reader to recall that "our work is addressed to fellow human beings who, despite their infinite diversity, have all been created in the image and likeness of God, and who share in common the instincts and aspirations of members of the great human family."² The goal the author has set for himself is truly ambitious.

Videla Escalada points out that the English abridgment of his treatise includes only the fundamental concepts of international aeronautical law. The result is an extremely broad and general treatment of the subject. *Aeronautical Law* is divided into twenty-four chapters. The author begins the first chapter, "The Notion of Aeronautical Law," by defining the concepts of aeronautical law as, "[a] set of principles and norms, of public and private law, both of an internal and international nature, governing the institutions and legal relations arising from aeronautical activity or which are modified thereby."³

Chapter Two treats the sources of aeronautical law, discussing

¹ F. VIDELA ESCALADA, *AERONAUTICAL LAW* v (1979).

² *Id.*

³ *Id.* at 2.

generally the 1919 Paris convention and the 1944 Chicago convention. The treatment is fairly superficial and not particularly enlightening. The author then compares the texts of the two documents in a half-page paragraph. The comparison is also superficial. As an aid to the reader, the author includes a table correlating the articles of the two conventions. This table is extremely helpful to anyone trying to trace the development of international agreements in this area. There are, however, some problems with this chapter which are apparent throughout the book. The author presumes the reader's familiarity with the conventions, providing little detail or background explanation. If the reader is indeed familiar with the subject, the treatment lacks sufficient depth to sustain his interest. If the reader is not well grounded in aviation law, the cursory treatment of the subject can only leave him bewildered.

Other chapters treat such varied and general subjects as "Air-space, Its Concept and Legal Essence"; "Infrastructure"; "Aircraft"; "Air Traffic"; "Acquisition of Aircraft"; "Aeronautical Misfortunes"; "Liability for Damage to Third Parties on the Surface"; and "Jurisdiction and Applicable Law." The work, then, is both more general and more concerned with philosophy than are most writings treating aviation law.

The author adds little to the body of legal scholarship dealing with international conventions and accords. The value of this work lies in the author's discussion of the civil law approach to matters which are necessarily considered in aviation, but treated either inadequately or not at all by any of the international compacts. The author analyzes the most basic of concepts, citing authorities of such diverse background as Marcel le Goff, Antonio Ambrosini, C.N. Shawcross, K.F. Beaumont, Agustin Rodriguez Jurado, and J.C. Sampaio de Lacerda. He discusses the problems inherent in these basic concepts (*e.g.*, contracts of carriage by air) and traces the history of both international and "internal" attempts to solve these problems.

In general, Videla Escalada feels that although these attempts have been more successful than is apparent at first glance, the problems are still far from optimal solution. Admitting his civil law bias, Videla Escalada reiterates throughout the work his con-

viction that civil law organization and classification would alleviate much of the confusion and resultant friction arising in international air law which of necessity creates confrontation of conflicting cultural, philosophical, and legal predispositions. Chapter Eleven, for example, is a discussion of contracts of charter, hire, and interchange of aircraft. Dr. Videla Escalada points out that in common law countries the term "charter" is extremely broad, including even non-scheduled transport. In civil law countries, the term "charter" is defined much more narrowly. Dr. Videla Escalada states that international agreement is necessary to achieve uniformity in terminology, which he concludes is not only desirable but necessary to the peaceful and orderly conduct of private international enterprise. Although the 1956 Paris agreement has defined "charter" as flights on which the entire space is hired by a single person (individual, firm, corporation, or institution) for the carriage of his or its staff or merchandise, provided that no part of such spaces be sold, Dr. Videla Escalada is dissatisfied. He feels the definition is unduly restrictive and points out that it does not take into consideration business realities. Specifically, it does not address itself to such problems as a charter by several travel agents for a single jointly organized tourist excursion. Civil law tends to systematize each area of law which it addresses. Charters are grouped in categories called utilization contracts, comprising hire, freight and interchange of aircraft. The author proposes an international systematization of the different contracts of utilization of aircraft. He discusses the various conventions which have attempted to address this problem, and concludes that these agreements have not gone far enough.

Although the book is obviously well researched and the result of much careful and scholarly work, it is extremely difficult to read. The sentences, which in Spanish are extremely correct, are long and convoluted to the English reader. The reader is at all times conscious that he is reading a translation of the Spanish document. The alphabetical index is barely adequate, and to the Anglo-Saxon ear, the style lacks precision. The endnotes are impressively numerous, but unfortunately, Dr. Videla Escalada relies almost entirely on secondary sources, citing few primary documents.

This book must be appreciated for what it is. It is not intended

to be a manual or a handbook for the practice of aviation law. It is not designed to be consulted quickly to determine the current status of the Geneva Convention or to determine at a glance the necessary steps to secure compensation for a bumped passenger. *Aeronautical Law* is in the best sense a scholarly treatise which should be read and digested at leisure. It is a thoughtful and a thought-provoking journey through the vagaries of aeronautical law directed by a guide who views its problems through the eyes of a civil lawyer. The author expresses an outlook and philosophical approach to aviation law problems which are foreign to the common law attorney, but which, in light of the philosophy expressed by the author, are eminently reasonable once the civil law perspective is understood. Such a book is extremely helpful to the attorney grounded in Anglo-Saxon law who finds himself dealing with attorneys from civil law countries.

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THE DRAGON AND THE EAGLE—A STUDY OF U.S.-CHINA RELATIONS IN CIVIL AIR TRANSPORT. By Jack C. Young. Occasional Papers/Reprints Series in Contemporary Asian Studies: University of Maryland School of Law, 1979, 65 pp.

Mr. Young, identified here as a JSD candidate at the Stanford University Law School and Director of Regulatory Affairs at KSI Corporation (California), presents here both a retrospective view of civil aviation in China to date and some of the possibilities for a present and future expansion of China towards an important role as an air transport power.

The author points out that, due to armed conflict over the years on the mainland and "the predominance of a traditional economy and means of transport,"¹ China's interest in civil aviation is even briefer than that of other nations. As late as 1932, China had

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¹ J. YOUNG, THE DRAGON AND THE EAGLE—A STUDY OF U.S.-CHINA RELATIONS IN CIVIL AIR TRANSPORT 1 (1979).

only 14,000 kilometers of air routes and the airlines were Chinese/United States and Chinese/German. There was very little manufacturing of aircraft and there too foreign investments predominated. Civil war further decimated what little existed and the Communist government, which consolidated its hold on the mainland took steps to rebuild a civil air capability with Russian aid. With various internal ups and downs, the industry made some progress in the 1950's and 1960's and, by 1977, China was reported to have over a hundred domestic routes and ten international routes.² With recent relative tranquility domestically, with a large country to integrate, with an ambitious economic program, including an apparent desire for tourism, and with a rapprochement with the United States, the People's Republic seemed to be ready for a major move forward.

With this background, Mr. Young then looks at past and present relations between the United States and China in several forms. He discusses United States-China relations prior to the Communist take-over in 1949, the United States-Taiwan ventures from 1949 to date, and the relations between the United States and the People's Republic to date.³ Clearly, the move from the United States acceptance of Taiwan as the government of all China to the recognition of the Communist government as the real government of China caused much soul searching on all sides. By preference of course, the United States and United States airlines would like to continue their relations and air services with Taiwan, where there is substantial passenger traffic and an air freight value of over \$1 billion a year,⁴ while entering into a vastly increased program with the People's Republic. Interestingly enough, while TWA, Pan American, United and Capital International have sought routes to the mainland, direct United States-mainland service had not been introduced when this study was completed (1979).

In the second part of his study, the author turns to prospects for the future development of the People's Republic's air program and its relation to civil aviation in the United States.⁵ Pre-1949, what

² *Id.* at 3.

³ *Id.* at 7-34.

⁴ *Id.* at 27.

⁵ *Id.* at 35-62.

little there was of Chinese manufacturing, repair, and international flight capabilities were United States-oriented and United States-dominated but, as noted above, there was only a very small aviation industry in China. The author also suggests that mainland China's turn to the Soviet Union, coupled with internal upheavals, made the period from 1949 to 1972 "lost years"⁶ as far as development of civil aviation was concerned. By the late sixties and early seventies, China started a new program of purchasing aircraft from France, the United Kingdom and, later, the United States. There was less concentration of purchasing and hence less dependence on any one country. There has also been an increase of Chinese interest in international routes, especially where Chinese national interests were perceived, as in Africa and Europe.

The author foresees, under all these circumstances, the potential for a greatly increased sale of United States-built aircraft to China but a smaller likelihood of United States-Chinese joint ventures in the aviation field.⁷ He also suggests the probability of a much larger international program as tourism and trade increase.

In brief, this study is a useful review of the past history of Chinese aviation interest which forms the prologue to recent changes and developments. It points out current issues and problems and should be read by any practitioner who may become involved in aircraft sales, or maintenance and with civil aviation relations involving the governments of the People's Republic and the Republic of China (Taiwan).

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⁶ *Id.* at 42.

⁷ *Id.* at 53-62.

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